



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Funeral Directors and Embalmers, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC65-20
<b>Regulation title</b>	Regulations of the Board of Funeral Directors and Embalmers
<b>Action title</b>	Clarification of current regulations
<b>Date this document prepared</b>	9/21/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The proposed action will make the time frame for notification of a change in ownership or management consistent, clarify that the manager of a crematory is not required to be a licensed funeral provider, and add the complete name of the forms referenced in regulation.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Board of Funeral Directors and Embalmers amended 18VAC65-20-10 et seq., Regulations of the Board of Funeral Directors and Embalmers at its meeting on September 15, 2009.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations, administer a registration and renewal program, and discipline regulated professionals.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations...*

In addition to the general powers and duties of a health regulatory board, the Board of Funeral Directors and Embalmers has specific statutory authority as follows:

***§ 54.1-2803. Specific powers and duties of Board.***

*In addition to the general powers and duties conferred in this subtitle, the Board shall have the following specific powers and duties to:*

- 1. Establish standards of service and practice for the funeral service profession in the Commonwealth.*
- 2. Regulate and inspect funeral service establishments, their operation and licenses.*
- 3. Require licensees and funeral service interns to submit all information relevant to their practice or business.*
- 4. Enforce the relevant regulations of the Board of Health.*
- 5. Enforce local ordinances relating to funeral service establishments.*
- 6. Advise the Department of Health Professions of any training appropriate for inspectors serving as the Board's agents.*
- 7. Establish, supervise, regulate and control, in accordance with the law, programs for funeral service interns.*
- 8. Establish standards for and approve schools of mortuary science or funeral service.*
- 9. Regulate preneed funeral contracts and preneed funeral trust accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms,*

*disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts.*

*10. Inspect crematories and their operations.*

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

Clarification that the crematory manager does not have to be a licensed funeral director or funeral service provider will allow crematories that only deal directly with licensed funeral establishments to hire persons who are trained and certified in the operation of a crematory but without all the education, examination and experience required to become a licensee. Crematories that deal directly with the public in providing cremation services are required to be licensed establishments and have a licensee as the manager of record. In either case, the crematory manager and persons who operate the retort in a crematory are required to hold certification to ensure that the facility is being operating consistent with current emission standards and other requirements that protect the health and safety of the public and protect the dignity and integrity of human remains.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

The regulatory changes have been discussed and agreed upon with the participation of funeral service providers, crematory certification organizations and advocacy representatives at an open meeting of the Board. Therefore, the Board does not anticipate any objection to the proposed changes.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

The proposed action will make the time frame for notification of a change in ownership or management consistent with the notification requirement in section 60. Amendments will replace the term "manager of record" in section 435 and clarify that the manager of a crematory is not required to be a licensed funeral provider. Amendments will also add the complete name of the appendices referenced for ease of compliance by licensees.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The advantages to the public are clarification of current requirements to ensure that crematory managers and operators hold certification but not required to become funeral service licensees. Current certification assures competency for operators while not placing an unnecessary burden of licensure for the managers. With the steady increase in cremations, the increased availability of crematories to provide cremation service to establishments may help to contain costs for families. There are no disadvantages.
- 2) With clarification in the regulation, there is less confusion among licensees and owners and therefore less staff time spent in explaining the rules and the board's intent. There are no other advantages or disadvantages to the Commonwealth.
- 3) There are not other pertinent matters of interest.

## Requirements more restrictive than federal

There are no requirements more restrictive than applicable federal requirements for the funeral industry.

## Localities particularly affected

There are no localities particularly affected.

## Regulatory flexibility analysis

There are no alternative regulatory methods.

## Economic impact

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There will be no on-going costs to the agency since the changes are clarification of current requirements.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>The individuals and businesses that are likely to be affected by the regulation are crematories registered with the Board.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 76 “stand-alone” crematories registered with the Board. They do business with funeral establishments but not with the general public. It is estimated that all would be small businesses. There are currently 507 licensed funeral establishments; of that number approximately 350 would be considered small businesses. The rest are establishments that are owned by large, national or international corporations.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>There are no additional costs associated with these amendments.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The only viable alternative is through the publication of guidance documents to clarify the Board’s intent in the regulation. For a short-term solution, the use of guidance documents is helpful for the time period it takes to promulgate a regulation, but clarity should be incorporated into the regulation for ease of compliance by regulated entities.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

There is no impact on the institution of the family and family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
170	n/a	Subsection D implies that the owner or manager shall notify the Board within 30 days of a change in ownership.	The requirement is amended to specify that the owner or manager shall request a reinspection of the establishment within 30 days of a change in ownership. <i>Currently section 60 requires that: “Any change in ownership or manager of record for an establishment or crematory shall be reported to the board within 14 days of the change,” so the two sections appear to be in conflict. The intent is to retain the 14-day requirement for reporting a change but also retain the 30-day requirement for requesting a reinspection.</i>
435	n/a	Sets out the requirements for registration of crematories, including the requirements for a crematory manager.	The section is amended to replace the term “manager of record” with the term “crematory manager.” <i>In the Section 10, a manager of record is defined as a licensed funeral service provider or funeral director. It was not the Board’s intent to require that the manager of a crematory that does not do business directly with the public be a licensee. If the crematory does deal directly with the public and not just provide services to</i>

			<i>establishments, the crematory must be a licensed funeral establishment and have a manager of record.</i>
630	n/a	Current regulation requires disclosures to consumers that provide accurate information as included in three forms, labeled as appendices.	The amended regulation would include the full name of each appendix, so licensees are better informed about the content of each form. <i>Forms are available on the Board's website, and the listing in 630 would mirror the listing of the forms, so licensees would be more clear about which information and disclosures must be provided to consumers.</i>